

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
**INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE AFFIDAVIT**  
**FOR CORPORATE OFFICERS AND MANAGERS OF MANAGER MANAGED LIMITED LIABILITY COMPANIES**  
APPLICATION FOR TWO (2) YEAR EXEMPTION  
FEE \$125



State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) : SS  
I, \_\_\_\_\_, being first duly sworn, state:  
(Applicant's name)

1. I am making these statements and representations in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department). I understand the Department is relying on the truth and accuracy of these statements when approving my independent contractor exemption certificate.

2. The business structure of the business I hold a position in is (circle one):      Corporation      Manager Managed LLC

My name is: \_\_\_\_\_  
(Last) (First) (Middle)

My mailing address is: \_\_\_\_\_  
(Street or PO Box) (City) (State) (Zip)

My business name is: \_\_\_\_\_  
(Name of business)

The business' physical address is: \_\_\_\_\_  
(Street or directions to physical location) (City) (State) (Zip)

My telephone number is: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_      My social security number is: \_\_\_\_\_ - \_\_\_\_ - \_\_\_\_

**You are required to notify the Department if any of the above information changes after the certificate is granted.**

3. I hold a position with a corporation or manager-managed limited liability company registered with the Montana Secretary of State. The occupation(s), trade or profession for which I am applying is/are: \_\_\_\_\_.  
I am providing documentation to the Department that demonstrates registration of the corporation or LLC with the Montana Secretary of State and which shows the business is an active, established business related to the occupation(s), trade or profession listed above. **(See instructions on back)**

4. I am an (circle one) officer of a corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

Circle one:      president      vice president      secretary      treasurer      manager

**AND;**

I either (please indicate which category you meet):

\_\_\_\_\_ own 20% or more of the number of shares of stock in the corporation or own 20% or more of the limited liability company; or

\_\_\_\_\_ own less than 20% of the number of shares of stock in the corporation or limited liability company, but when my ownership is aggregated with the shares owned by a person or persons listed in the third category, the total is 20% or more of the number of shares in the corporation or limited liability company; or

\_\_\_\_\_ I am the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets one of the requirements above.

5. When acting as an independent contractor I must be free from control or direction over the performance of my services and the details of my work, both under contract and in fact. The hiring agent only offers direction and exercises control in matters essential to specifying the end result.

6. I understand and agree that as a qualifying corporate officer or manager of a manager managed LLC, I am exempt from the requirements of the Workers' Compensation Act of Montana as provided by § 39-71-401(2)(r)(iii) or (iv), MCA, but that I may voluntarily elect workers' compensation coverage for myself. I also understand and agree that if my independent contractor exemption certificate is granted, **I waive all my rights to voluntarily obtain coverage** for work performed under the certificate. I further understand I am precluded from obtaining benefits under the Act from the hiring agent related to my work performance as an independent contractor. I understand and agree that I am responsible for the taxes related to my work as an independent contractor. I understand that as an independent contractor I will not be afforded protections under the Wage Payment Act, the Human Rights Act, or the Workers' Compensation Act. However, I also understand that as a corporate officer for a corporation or a manager of a manager-managed LLC, I am not exempt from Montana's Unemployment Insurance laws, and must report my wages to the Unemployment Insurance Division.

7. I also understand that if granted, the independent contractor exemption certificate will remain in effect for **TWO years** for the occupations listed on the certificate, unless I notify the Department in writing that I want to have the exemption cancelled, or the Department revokes or suspends the independent contractor exemption certificate. I understand that if I want to maintain my independent contractor exemption, I will have to re-qualify every two years.

By signing this affidavit and the associated waiver form, I understand and agree that if my independent contractor exemption certificate is granted **I WAIVE ALL MY RIGHTS TO OBTAIN COVERAGE AND BENEFITS THAT I MAY HAVE UNDER MONTANA'S WORKERS' COMPENSATION ACT.** I further declare that I am 18 years old or older, and that all of the information I have supplied in and with this Affidavit is true.

By: \_\_\_\_\_  
Applicant Signature

SUBSCRIBED AND SWORN before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public  
Residing at \_\_\_\_\_,

(Notarial seal)

My commission expires \_\_\_\_\_

**\*\*Notaries Please Note\*\***

Please put applicant under oath  
before executing this affidavit.  
This is a sworn statement.

**Notice to Applicants:** Montana law provides for a civil penalty of up to \$1,000 for each violation of the following: A person may not perform work as an independent contractor without obtaining either workers' compensation insurance or an independent contractor exemption certificate; perform work as an independent contractor when the Department has revoked or denied the independent contractor's exemption certificate; transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person; alter or falsify an independent contractor exemption certificate; and/or misrepresent the person's status as an independent contractor. The Department has the authority to investigate your working relationships as an independent contractor. If through investigation, the Department determines you are acting as an employee, this exemption may be suspended or revoked.

**Notice to Employers:** Montana law prohibits employers from avoiding their responsibility to provide workers' compensation insurance for employees. An employer may not require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or exert control to a degree that destroys the independent contractor relationship. In addition to any other penalty or sanction, a person or employer who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

**Notice to Hiring Agents:** You can be found to be an employer if you have the **right to control or exercise control** over the worker. A person who violates a provision of the law is subject to a fine to be assessed by the Department of up to \$1,000 for each violation.

**INSTRUCTIONS**

Independent contractor exemption certificates are issued individually. Each person requesting an exemption must complete his or her own form.

You may apply if you are a officer of a corporation or manager of a manager managed LLC. Corporate officers or managers must provide proof the business with which the applicant is associated with is actively registered with the Secretary of State's (SOS) office and proof the applicant is an officer or manager who owns 20% or accumulatively owns 20% or more with an officer or manager to whom the applicant is related.

If you have any questions about completing this affidavit or the waiver, or determining if you are an independent contractor, please call the Independent Contractor Central Unit in Helena at (406) 444-9029. You may visit our website at [www.mtcontractor.com](http://www.mtcontractor.com)

1. Read the entire affidavit and the entire accompanying waiver before signing.
2. If you understand all of the statements on both forms and believe you qualify as an independent contractor, complete the affidavit and the waiver in the manner identified below.
3. In paragraph 2 of the affidavit, provide the following information:
  - The business structure is (circle the appropriate type)
  - My name is (include your full individual name)
  - My mailing address is (include the number, street, box, city, state and zip code)
  - My business name is
  - The business physical address is (include the number, street, directions, city, state and zip code)
  - My telephone number is
  - My social security number is
4. In paragraph 3 of the affidavit, you must list the trades, occupations, or professions for which you are claiming an independent contractor exemption certificate.
5. Individuals must submit documentation for each trade, occupation or profession that total 15 points, to receive an independent contractor exemption certificate. A maximum of two items may be submitted to receive the total points for consideration in each category. The Department may award points for items submitted up to the total points in each category. Items provided for certification may receive up to the following point value:

DOCUMENTATION CATEGORIES	POINTS	DOCUMENTATION CATEGORIES	POINTS
Workers' Compensation, Unemployment Insurance, Revenue accounts for employees (all three)	10	Registered name of business with Secretary of State	3
List of equipment & tools with approximate value	6	Business structure registered with the Secretary of State (must provide if corporation or LLC)	3
Memo of Understanding or Contract evidencing independent contractor status	6	Education certification	3
Business location, lease or rental agreement	6	Advertises services in a newspaper, phone book	3
Trucking company lease agreement	6	Two or more bids or estimates	3
Liability insurance policy	6	Business bank account	3
Bonding	6	Federal Employer Identification Number FEIN	1.5
Business Tax form or records (schedules C, E, F, or K)	6	Credit card or charge account in business name	1.5
Two Form 1099's / business tax receipts	6	Advertises using sign on vehicle, in yard, bulletin boards, corner lamp post, flyers	1.5
Valid, current Partnership Agreement	3	Telephone bill in business name	1.5
Professional License	3	Printed invoices, cards, brochures. Proof of orders for printed hats or shirts	1.5
Application or business license permit	3	Standard billing invoices	1.5
Internet, on a professional list, or affiliation	3		

6. Sign at the bottom of the affidavit and have your sworn statement and signature notarized. In addition to confirming your identity, the notary must require you to verbally swear to the truth of the information supplied in and with your affidavit. If you agree to waive your rights as detailed in the waiver, sign the waiver and have your signature notarized.
7. Both the waiver and affidavit must be complete or your application will be denied.
8. Pay special attention to the civil penalty for misrepresentations made concerning a person's status as an independent contractor.
9. Make checks payable to Montana Department of Labor & Industry in the amount of \$125.
10. Mail the completed waiver, affidavit, attached documentation, and \$125 fee to:

Montana Department of Labor and Industry  
Employment Relations Division  
Independent Contractor Central Unit  
P.O. Box 8011  
Helena, MT 59604-8011

# Waiver of eligibility for Workers' Compensation Benefits

Instructions: Sign this waiver only if you understand and agree to all of its provisions.

Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

\_\_\_\_\_  
(Last) (First) (Middle)

I, \_\_\_\_\_, am executing this waiver in order to apply for an independent contractor exemption certificate with the Montana Department of Labor and Industry (Department).

Please **initial** all the following statements if you understand and agree:

\_\_\_\_\_  
(Initial) I understand and agree that as a qualifying corporate officer or qualifying manager of a manager managed liability company (LLC) who directly owns or, when aggregated with qualifying relatives, owns 20% or more of the shares of a corporation or LLC, I am exempt from the requirement to obtain workers' compensation coverage on myself under the Montana Workers' Compensation Act of Montana, Title 39, Chapter 71, MCA (Act). I also understand that I can voluntarily choose to obtain workers' compensation coverage on myself under the Act and would then be entitled to all the benefits under the Act. **However, by applying for an independent contractor exemption certificate, I agree to waive all my rights to obtain the coverage benefits for which I may be eligible under the Act, for any work performed under the certificate.** I understand and agree that if I am injured or develop an occupational disease while working for a hiring agent, I am precluded from obtaining any benefits under the Act for any and all damages arising out of any injury or occupational disease related to my work performance under an independent contractor exemption certificate. I understand and agree that if I die from an injury or occupational disease related to my work performance under an independent contractor exemption certificate, this waiver is effective against any of my beneficiaries as designated under the Act. I understand this waiver is not necessary for workers' compensation purposes if I elect to obtain workers' compensation insurance for myself as provided by the Act.

\_\_\_\_\_  
(Initial) I understand and agree that if my independent contractor exemption certificate is granted, I will be conclusively presumed in court to have waived all benefits under the Act for work performed under the certificate.

\_\_\_\_\_  
(Initial) I am engaged in an independently established trade(s), occupation(s), or profession(s) (occupation(s) related to the qualifying corporation or LLC that I hold a position with and I have provided accurate and truthful documentation to the Department to verify the existence of this occupation(s) in my affidavit application.

\_\_\_\_\_  
(Initial) When acting as an independent contractor, I agree to maintain my status as an independent contractor by being free from control or direction over the performance of my services and the details of my work, both under contract and in fact. I agree hiring agents will only be permitted to offer direction and exercise control in matters essential to specifying the end result. I understand that while performing work under my independent contractor exemption certificate that I am waiving potential benefits under the Act unless I have a written or oral agreement to work as an employee for that hiring agent.

\_\_\_\_\_  
(Initial) I understand and agree that I am responsible for all taxes related to my work as an independent contractor, including unemployment insurance taxes.

\_\_\_\_\_  
(Initial) I understand the Department has the authority to investigate my working relationships as an independent contractor and may suspend or revoke my independent contractor exemption certificate if appropriate.

\_\_\_\_\_  
(Initial) I am of sound mind, I am 18 years of age or older, I have read and understand this waiver, and I am voluntarily and knowingly executing this waiver free from duress, coercion, or misrepresentation from any person.

By signing this waiver, I understand and agree that I WAIVE ALL STATUTORY RIGHTS AND BENEFITS THAT I MAY BE ELIGIBLE FOR UNDER THE ACT, if I chose to obtain coverage on myself.

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
(Applicant signature)

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) : SS

SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Notarial seal)

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Printed Name of Notary Public)

Residing at \_\_\_\_\_,

My commission expires \_\_\_\_\_